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SUGGESTIONS OF THE SECRETARIAT TO REVISE THE DRAFT RULES OF PROCEDURE OF THE ASSEMBLY OF THE INTERNATIONAL SEABED AUTHORITY

(Document LOS/PCN/WP.20/Rev.3, as contained in the draft provisional final report of the plenary (LOS/PCN/WP.52/Add.3))

The following are suggestions of the Secretariat for revising the draft rules of procedure of the Assembly of the International Seabed Authority. These suggestions have been prepared taking into account the provisions of the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea which was adopted by the General Assembly on 28 July 1994. Most of the relevant draft rules have been redrafted but in a few cases attention is only drawn for the need for revision.

Rule 40 (Duties of the Secretary-General)

1. The Secretary-General shall act in that capacity in all meetings of the Assembly and its subsidiary organs. He may designate a member of the Secretariat to act in his place at these meetings. He shall discharge such other responsibilities as are assigned to him by the Assembly under Part XI of the United Nations Convention on the Law of the Sea and under the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea (hereinafter referred to as the Agreement).

Rule 41 (Duties of the Secretariat)

2.[new] The Secretariat shall also perform the functions of the Enterprise, as described in section 2, paragraph 1, of the annex to the Agreement, until it begins to operate independently of the Secretariat. The Secretary-General of the Authority shall appoint from within the staff of the Authority an interim Director-General to oversee the performance of these functions by the Secretariat.

Rules 70 (Decisions on questions of procedure) and 71 (Decisions on questions of substance)

The text of these rules should be replaced with the text contained in section 3, paragraphs 2, 3, 4 and 7, of the annex to the Agreement. The new rule should read as follows:

"1. As a general rule, decision-making in the organs of the Authority should be by consensus.

"2. If all efforts to reach a decision by consensus have been exhausted, decisions by voting in the Assembly on questions of procedure shall be taken by a majority of members present and voting, and decisions on questions of substance shall be taken by a two-thirds majority of members present and voting, as provided for in article 159, paragraph 8, of the Convention.

"3. Decisions of the Assembly on any matter for which the Council also has competence or on any administrative, budgetary or financial matter shall be based on the recommendations of the Council. If the Assembly does not accept the recommendation of the Council on any matter, it shall return the matter to the Council for further consideration. The Council shall reconsider the matter in the light of the views expressed by the Assembly.

"4. Decisions of the Assembly having financial or budgetary implications shall be based on the recommendations of the Finance Committee."

Rule 86 (Subsidiary organs - Establishment)

It is suggested to add at the end of this rule the words "and section 1 of the annex to the Agreement". Rule 86 should then read as follows:

"The Assembly may establish such subsidiary organs as it finds necessary for the exercise of its functions in accordance with Part XI of the United Nations Convention on the Law of the Sea and section 1 of the annex to the Agreement."

Rule 90 (Membership)

In view of the provisions of the Agreement providing that States and certain entities are entitled to participate, within a limited period of time, as members of the Authority on a provisional basis, rule 90 should be changed to reflect these provisions of the Agreement. It should also be kept in mind that this rule is closely linked to other rules where the reference is made to "the members of the Authority" (rules 3, 4, 5, etc.). Rule 90 should read as follows:

"All States Parties to the United Nations Convention on the Law of the Sea and the Agreement, as well as States and entities who are entitled in accordance with the relevant provisions of that Agreement to be members of the Authority on a provisional basis are ipso facto members of the Assembly."

Rule 91 (Suspension of the exercise of voting rights)

In accordance with section 1, paragraph 14, of the annex to the Agreement, the administrative expenses of the Authority during the transitional period will be met through the budget of the United Nations. Therefore, during that period the application of rule 91 should be suspended. The Assembly may wish to take a decision that rule 91 shall become operative upon entry into force of the Agreement.

Rule 92 (Suspension of the exercise of rights and privileges of membership)

Since the Agreement does not provide for suspension of the exercise of rights and privileges of membership while such provisions are contained in the Convention it would be necessary to revise this rule to make it consistent with the Convention and the Agreement.

Rule 93 (Observers)

It is suggested that rule 93 should be revised as follows: paragraphs 1 (a, b and c) and 2 should be deleted; paragraphs 1 (d and e) and 3-6 should be renumbered.

The revised text of rule 93 should read as follows:

"1. The following may participate as observers in the Assembly, if so invited by the latter, in accordance with the provisions of the present rule:

"(a) The United Nations, its specialized agencies, the International Atomic Energy Agency and other intergovernmental organizations;

"(b) Non-governmental organizations recognized by the Economic and Social Council of the United Nations.

"2. Observers referred to in paragraph 1 (a) of this rule may designate representatives to participate in the deliberations of the Assembly upon the invitation of the President on questions within the scope of their competence.

"3. Written statements submitted by observers referred to in paragraph 1 (a) of this rule shall be distributed by the Secretariat to the members of the Assembly.

"4. Observers referred to in paragraph 1 (b) of this rule may designate representatives to sit at public meetings of the Assembly and upon the invitation of the President and subject to the approval by the Assembly may make oral statements on questions within the scope of their activities.

"5. Written statements submitted by observers referred to in paragraph 1 (b) of this rule within the scope of their competence which are relevant to the work of the Assembly shall be distributed by the

Secretariat in the quantities and in the languages in which the statements are made available."

Rules 94 (Nominations) and 95 (Order of elections)

According to section 3, paragraphs 8 and 16, of the annex to the Agreement the provisions of article 161, paragraphs 1 and 8 (b) and (c) of the Convention, relating to the election of the members of the Council, shall not apply. Under the Agreement members of the Council shall be elected in accordance with the procedure provided for in section 3, paragraphs 9 (b), 10 and 15, of the annex to the Agreement. Consequently, the text of draft rules 94 and 95 is no longer valid because it is based on the provisions of paragraph 1 of article 161 of the Convention. Rules 94 and 95 may be changed in two ways. They may be replaced with a single rule, which would simply state that "the Council shall be elected in accordance with the procedures provided for in section 3, paragraphs 9, 10 and 15, of the annex to the Agreement". Another alternative, which is preferable, would be to revise rules 94 and 95 by bringing them into conformity with the relevant provisions of the Agreement. Under this approach the following changes should be made in rules 94 and 95:

Rule 94 should be replaced by a new rule consisting of two paragraphs reproducing respectively the text of section 3, paragraphs 9 (b) and 10, of the annex to the Agreement.

Revised rule 94 would read as follows:

"1. Before electing the members of the Council, the Assembly shall establish lists of countries fulfilling the criteria for membership in the groups of States specified in section 3, paragraph 15 (a) to (d), of the annex to the Agreement. If a State fulfils the criteria for membership in more than one group, it may only be proposed by one group for election to the Council and it shall represent only that group in voting in the Council.

"2. Each group of States in paragraph 15 (a) to (d), referred to in paragraph 1, shall be represented in the Council by those members nominated by that group. Each group shall nominate only as many candidates as the number of seats required to be filled by that group. When the number of potential candidates in each of the groups referred to in paragraph 15 (a) to (e) exceeds the number of seats available in each of those respective groups, as a general rule, the principle of rotation shall apply. States members of each of those groups shall determine how this principle shall apply in those groups."

Rule 95 should be revised as follows:

Paragraph 1 should be replaced by section 3, paragraph 15, of the annex to the Agreement, paragraph 2 should be deleted and paragraph 3 should be retained in its present form. The new text of rule 95, paragraph 1, would read as follows:

"Rule 95 (Elections)

"1. The Council shall consist of 36 members of the Authority elected, in the following order, by the Assembly at its regular sessions from candidates nominated in accordance with rule 94:

"(a) Four members from among those States Parties which, during the last five years for which statistics are available, have either consumed more than 2 per cent in value terms of total world consumption or have had net imports of more than 2 per cent in value terms of total world imports of the commodities produced from the categories of minerals to be derived from the Area, provided that the four members shall include one State from the Eastern European region having the largest economy in that region in terms of gross domestic product and the State, on the date of entry into force of the Convention, having the largest economy in terms of gross domestic product, if such States wish to be represented in this group;

"(b) Four members from among the eight States Parties which have made the largest investments in preparation for and in the conduct of activities in the Area, either directly or through their nationals;

"(c) Four members from among States Parties which, on the basis of production in areas under their jurisdiction, are major net exporters of the categories of minerals to be derived from the Area, including at least two developing States whose exports of such minerals have a substantial bearing upon their economies;

"(d) Six members from among developing States Parties, representing special interests. The special interests to be represented shall include those of States with large populations, States which are land-locked or geographically disadvantaged, island States, States which are major importers of the categories of minerals to be derived from the Area, States which are potential producers of such minerals and least developed States;

"(e) Eighteen members elected according to the principle of ensuring an equitable geographical distribution of seats in the Council as a whole, provided that each geographical region shall have at least one member elected under this subparagraph. For this purpose, the geographical regions shall be Africa, Asia, Eastern Europe, Latin America and the Caribbean and Western Europe and Others."

Rule 96 (Terms of office)

Each member of the Council shall be elected for four years. At the first election, however, the term of one half of the members of each group referred to in section 3, paragraph 15, of the annex to the Agreement shall be two years. The members of the Council whose terms are to expire at the end of two years shall be chosen by lot to be drawn by the Secretary-General of the United Nations immediately after the first election.

Rules 100 (Elections), 101 (Terms of office) and 102 (By-elections)

The Assembly may wish to review rules 100 to 102 in order to reflect the provisions of section 1, paragraph 4, and section 2 of the annex to the Agreement.

Rule 103 (The Director-General of the Enterprise)

The Assembly may wish to review rule 103 in order to reflect the amendment to rule 41, which takes into account the provisions of section 2, paragraph 1, of the annex to the Agreement.

Rules 104 (Proposed annual budget) and 106 (Contributions)

In the light of the provisions of section 1, paragraph 14, and section 2, paragraph 3, of the annex to the Agreement it is suggested to insert, at the beginning of rule 104, the words "subject to the provisions of section 1, paragraph 14, of the Agreement". In the same context the Assembly may wish also to review rule 106.

Rule 107 (Method of amendments)

This rule should be revised to read as follows:

> "These rules of procedure, with the exception of those derived from the United Nations Convention on the Law of the Sea and the Agreement, may be amended by a decision of the Assembly, taken by a simple majority of the members of the Authority present and voting."

New rule (Election of members of the Finance Committee)

In accordance with the documents attached to the final report of the Preparatory Commission, 15 members of the Finance Committee shall be elected by the Council (volume II of the final report of the Preparatory Commission, rule 81 of the draft rules of procedure of the Council). Under section 9, paragraph 3, of the annex to the Agreement, members of the Finance Committee shall be elected by the Assembly. Consequently, section XVII (Elections to organs) of the rules of procedure of the Assembly should have an additional rule concerning the election of 15 members of the Finance Committee. As with some other rules, there may be two approaches to drafting this new rule.

A more simple approach would be to make a cross reference in this rule to the provisions of section 9 related to the election of members of the Finance Committee. The new rule should then read as follows:

> "The Assembly shall elect 15 members of the Finance Committee, established by section 9 of the annex to the Agreement, in accordance with the provisions of that section."

It should be noted, however, that rules of procedure are usually required to be self-explanatory. Therefore, another approach would be to reproduce in

the aforementioned rule the main provisions of the first six paragraphs of section 9. In such case the text of the rule should read as follows:

"1. The Assembly shall elect 15 members of the Finance Committee from the candidates nominated by the States Parties by taking into due account the need for equitable geographical distribution and the representation of special interests. Members of the Finance Committee shall have appropriate qualifications relevant to financial matters.

"2. Candidates for the election to the Finance Committee shall be nominated by the States Parties. They shall be of the highest standards of competence and integrity.

"3. No two members of the Finance Committee shall be nationals of the same State Party.

"4. Each group of States referred to in section 3, paragraph 15 (a), (b), (c) and (d), of the annex to the Agreement shall be represented on the Finance Committee by at least one member. Until the Authority has sufficient funds other than assessed contributions to meet its administrative expenses, the membership of the Finance Committee shall include representatives of the five largest financial contributors to the administrative budget of the Authority. Thereafter, the election of one member from each group shall be on the basis of nomination by the members of the respective group, without prejudice to the possibility of further members being elected from each group.

"5. Members of the Finance Committee shall hold office for a term of five years. They shall be eligible for re-election for a further term.

"6. In the event of the death, incapacity or resignation of a member of the Finance Committee prior to the expiration of the term of office, the Assembly shall elect for the remainder of the term a member from the same geographical region or group of States.

"7. Members of the Finance Committee shall have no financial interest in any activity relating to matters upon which the Committee has the responsibility to make recommendations. They shall not disclose, even after the termination of their functions, any confidential information coming to their knowledge by reason of their duties for the Authority."